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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/765,738	01/27/2004	James M. McDonough	APD-001	1102

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EXAMINER

WONG, STEVEN B

ART UNIT PAPER NUMBER

3711

DATE MAILED: 12/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/765,738

Applicant(s)

MCDONOUGH ET AL.

Examiner

Steven Wong

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1, 2 and 5-19 is/are rejected.
- 7) ☒ Claim(s) 3 and 4 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 1/27/04.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date, ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 9, 18 and 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 9, the language "the upper shaft extensions" lacks a proper antecedent basis. It is assumed that applicant intends claim 9 to depend from claim 3. Clarification is required.

In claim 18, the language "with connected to" is inapt.

In claim 18, the language "the web member" lacks a proper antecedent basis.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2, 5-7, 10, 11 and 13-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Chase (3,414,268). Regarding claim 1, Chase discloses a golf tee comprising a base (12), a shaft (15A) connected to the base and a top portion (11) having a plurality of legs (17). The top portion includes a web member that extends between the legs and connects them. This web member is independent of the shaft.

Regarding claim 2, Chase provides four legs with the web member extending between each of the legs.

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Regarding claim 5, Chase teaches that the top portion is made from a flexible material and thus is inherently collapsible to some extent. Further, the top portion is capable of fitting through an opening within the practice mat since the claims fail to define the size of the opening.

Regarding claims 6 and 7, Chase teaches for the tee to comprise a flexible, resilient elastic material (column 1, lines 47-57; column 2, lines 35-39).

Regarding claim 10, note Figures 7 and 8 of Chase showing an opening between the legs.

Regarding claim 11, the legs of Chase comprise multiple portions including top and bottom portions. The ball seated on the legs will only contact the top portion.

Regarding claim 13, note the rejection of claim 1 above as claim 13 recites substantially similar limitations.

Regarding claim 14, Chase provides an enlarged base (noted generally at element 12 in Figure 8).

Regarding claim 15, Chase provides four legs.

Regarding claim 16, note the rejection of claim 1 above.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chase (3,414,268).

It would have been obvious to one of ordinary skill in the art to form the tee of Chase from a

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rubber or plastic material in order to take advantage of that material's well known physical characteristics.

7. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chase (3,414,268) in view of Andrikian (5,383,668). Andrikian discloses a golf tee that is used with a practice mat. The tee is inserted through an opening in the mat (note Figure 3). It would have been obvious to one of ordinary skill in the art to form the tee of Chase with the enlarged base of Andrikian and utilize the tee with a practice mat in order to allow the tee to be used in a driving range environment.

8. Claim 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Patterson (5,301,950). Patterson discloses a golf tee and method for teeing a golf ball comprising providing a plurality of legs (noted generally at 30), aligning the golf ball between the legs and using a golf club to push the golf ball up over the web member (32). However, Patterson lacks the teaching for at least three legs as recited.

Attention is directed to column 6, lines 15-20 stating that additional strips may be provided for the tee. It would have been obvious to one of ordinary skill in the art to provide additional strips (32) for the tee and thus create at least three legs in order to allow the golfer to tee the golf ball from various positions.

Allowable Subject Matter

9. Claims 3, 4 and 9 appear to read over the prior art of record.

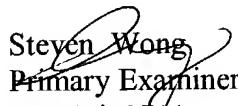
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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Wong whose telephone number is 571-272-4416. The examiner can normally be reached on Monday through Friday 7am-3:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Vidovich can be reached on 571-272-4415. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Steven Wong
Primary Examiner
Art Unit 3711

SBW
November 29, 2004